

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Forbearance of the Verizon	)	
Telephone Companies Pursuant to	)	WC Docket No. 01-338
47 U.S.C. §160(c)	)	
_____	)	

**COMMENTS OF THE  
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),<sup>1</sup> through the undersigned and pursuant to the *Public Notice* released by the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau (WCB)<sup>2</sup> and pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>3</sup> hereby submits its comments on the Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. §160(c) (Petition). In its Petition, Verizon seeks forbearance from being required to comply with certain items on the Section 271 checklist<sup>4</sup> – *i.e.*, forbearance from being required to offer certain network elements, which incumbent local exchange carriers (ILECs) are required to offer in order to demonstrate that the local market is open to competition before they can provide in-region interLATA telecommunications services. Verizon's request for this forbearance hinges on the Commission's findings in its *UNE Triennial Review* proceeding.<sup>5</sup> Verizon explains that if the Commission finds in that proceeding that

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<sup>1</sup> USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

<sup>2</sup> *Public Notice*, CC Docket No. 01-338, DA 02-1884 (rel. Aug. 1, 2002) soliciting comment on the Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. §160(c).

<sup>3</sup> 47 C.F.R. §§1.415 and 1.419.

<sup>4</sup> 47 U.S.C. §271(c)(2)(B).

<sup>5</sup> *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98;

certain network elements do not meet the Section 251(d)(2) standard for mandatory unbundling, then the corresponding items on the Section 271 checklist should be deemed satisfied.<sup>6</sup> USTA asserts that granting the relief requested will not harm competition, but rather will facilitate facilities-based competition. USTA supports the requested relief and urges the Commission to grant the Petition.

## DISCUSSION

Section 271 of the Telecommunications Act of 1996 (1996 Act) prevents regional Bell operating companies (RBOCs) from providing in-region interLATA services until either a facilities-based competitor has entered into an interconnection agreement, which has been approved pursuant to Section 252, for access and interconnection to an RBOC's network facilities or until 10 months after the enactment of the 1996 Act if no carrier has requested such access and interconnection.<sup>7</sup> In order to demonstrate that it is offering or providing access and interconnection and that the local market is open to competition, an RBOC must satisfy the competitive checklist set forth in Section 271(c)(2)(B). Having satisfied the checklist, an RBOC can provide in-region interLATA service.

The checklist contains, among other things, requirements that RBOCs offer and provide certain network elements, which correspond to certain network elements that are required pursuant to the Commission's unbundling rules.<sup>8</sup> In its *UNE Triennial Review* the Commission is evaluating its network element unbundling rules and considering whether there should be any

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*Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd 22781 (2001) (*UNE Triennial Review*).

<sup>6</sup> See Petition at 3, 7.

<sup>7</sup> See 47 U.S.C. §§271(c)(1)(A) and (B).

<sup>8</sup> See 47 C.F.R. §51.319.

changes to those rules.<sup>9</sup> Switching, dedicated transport, high-capacity loops, and signaling are the network elements at issue in this Petition. If the Commission determines that ILECs are no longer required to unbundle any of these network elements, then the Commission will have determined that such elements are competitively available, either through third-party suppliers, self-provisioning, or inter-modal sources. Furthermore, since the 1996 Act only requires an ILEC to make a network element available to its competitor if the element is necessary and if the competitor would be impaired without access to such element, then a determination that an element is no longer necessary or that lack of such an element would not impair a competitor – because the element is competitively available – is persuasive evidence that the local market cannot be harmed if ILECs are not required to provide such element. Accordingly, if there is no need for ILECs to provide a network element to enable competitors to compete, then there is no need to require ILECs to provide such an element as a prerequisite to enter the in-region interLATA market. More specifically, if a network element is no longer on the Commission's unbundled network element (UNE) list, then the requirements of Section 271 are not undermined by the forbearance from requiring compliance with the checklist item that corresponds to the network element that was eliminated from the UNE list.

Removal of a network element from the UNE list is an act of recognition that facilities-based competition is growing. However, enforcing the requirement to provide a network element pursuant to Section 271(c)(2)(B) when the corresponding network element has been eliminated from the UNE list (because it is no longer required pursuant to Section 251(d)(2)) continues to foster competitors' reliance on the ILECs' facilities and discourages competitors

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<sup>9</sup> See generally *UNE Triennial Review*. In its Comments and Reply Comments in the *UNE Triennial Review*, USTA recommended that the Commission remove switching, dedicated transport, high-capacity loops, and the high frequency portion of the loop from the unbundled network element (UNE) list, emphasizing that these elements are

from building their own facilities, resulting in less facilities-based competition. Thus, the Commission's forbearance from requiring ILECs to comply with certain items on the competitive checklist of Section 271(c)(2)(B) when the corresponding network element has been eliminated from the UNE list will facilitate growth of facilities-based competition.

For these reasons, USTA supports Verizon's request that if the Commission eliminates the unbundling requirements for switching, dedicated transport, high-capacity loops, and/or signaling, then Commission should forbear from requiring compliance with the corresponding item on the competitive checklist – *i.e.*, items four through six and item ten of Section 271(c)(2)(B).<sup>10</sup> By supporting this regulatory forbearance, USTA is not suggesting that carriers' independent contractual obligations for provision of any of these network elements through an interconnection agreement should be abrogated by such regulatory forbearance. On these bases, USTA urges the Commission to grant Verizon's Petition.

Respectfully submitted,

**UNITED STATES TELECOM ASSOCIATION**

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readily available through third-party suppliers, self-provisioning, and inter-modal sources. *See* USTA Comments at 6-9 and USTA Reply Comments at 9.

<sup>10</sup> *See* 47 U.S.C. 271(c)(2)(B)(iv-vi) and (x).